IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10139 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHEIKH FAZLURRAHEMAN HIFZUR- RAHEMAN RASHID - Petitioner(s)
Versus
COLLECTOR & 1 - Respondent(s)

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Appearance :
MR NEHAL R JOSHI for Petitioner(s) : 1,
MR PATHIK ACHARYA, ASSTT GOVERNMENT PLEADER for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 1 - 2.
MR BC DAVE for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 23/07/2007

ORAL JUDGMENT

1. Often it is felt that there is a class of persons who abuse the process of law. This is one such case. Earlier, Special Civil Application No. 342 of 1999 was filed challenging an order passed by the

Collector, Panchmahal at Godhra in Appeal No. 5 of 1998 dated 4.10.1998/ January, 1999.

The said petition was heard and decided by this Court by a judgment and order dated 7.8.2000. Relevant part of the order reads as under:

> "This is a case wherein the President of Lunawada Nagar Palika has acted without any authority. The petitioner in total disregard of law and flouting the orders passed by the competent authority, has put up the construction. The order of the Collector is in accordance with law. In the facts and circumstances of the case, the petition is required to be rejected and the same is hereby rejected. Notice is discharged. Ad-interim relief granted earlier stands vacated. The petitioner shall deposit a sum of Rs.5,000/- (Rupees Five thousand only) in legal aid...."

The matter was carried in appeal, being Letters Patent Appeal No. 152 of 2001 and the same was disposed of by the Division Bench by order dated 07.03.2001. For ready perusal, the order is reproduced hereinbelow:

> "When the matter was called out, learned advocate Mr. Kharadi, under instructions stated before us that the appellant would like to approach the competent Authority Collector, **for**

rehearing as the original petitioner, appellant before us was not heard and the order was recorded by the Collector concerned. In this view of the matter it will be for the appellant, original-petitioner to appropriately move the Collector **for rehearing** and it will be for the concerned Collector to entertain and adjudicate upon such a request or prayer as and when made, in accordance with law.

In the circumstances, **this appeal is permitted to be withdrawn**. Hence, it stands disposed of as withdrawn....” (emphasis supplied)

2. The petitioner approached the Collector and the Collector passed order dated 30.09.2002, which was again challenged before this Court, that was the **second round** of litigation, by filing Special Civil Application No.10535 of 2002. That was heard and disposed of by the Division Bench of this Court, passing the following order on 18.10.2002:

“**After the arguments**, the learned counsel for the petitioner states that the petitioner seeks permission to withdraw this petition with a view to avail of the alternative remedy available to him under Section 264 of the Gujarat Municipalities Act, 1963. The petition is rejected as withdrawn” (emphasis supplied).

3. The petitioner approached the authority under

Section 264 of the Gujarat Municipalities Act, 1963 by filing Revision Application No. 70 of 2002. That revision is rejected by order dated 29.03.2007 by the Deputy Secretary, Urban Development and Urban Housing Department of the Government of Gujarat.

It is against that order that the present petition is filed, i.e. the **third round** of litigation for the same issue. The present petition was filed on 13.04.2007 alongwith an urgent note. The matter came up on Board on 16.04.2007. The Court passed the following order:

> "Draft amendment is allowed.
> **Notice** returnable on 27th April,2007. Direct service is permitted."

Since then, the matter is getting adjourned from time to time. It is heard for admission today.

4. Mr. Joshi, learned advocate for the petitioner, vehemently submitted that the authorities have committed an error in passing order dated 29.03.2007. He submitted that, in fact, the Collector had also committed an error in passing order dated 30.09.2002 even after rehearing the petitioner and, therefore, the petition requires consideration and the petitioner deserves the relief(s) as prayed for.

5. To appreciate the facts, the same are set out below:

5.1. Since 1970, the petitioner is using the land admeasuring 38 x 12 feet adjacent to the land bearing City Survey No.5254 Paiki admeasuring 22-88-54 Sq.Mtrs., i.e. 24 x 12 feet situated outside Darkoli Darwaja, behind Forest Office and that is the subject matter of the dispute.

5.2. In the year 1996, the Nagar Palika raised a dispute over the said disputed land. In response to that, the late father of the petitioner filed Regular Civil Suit No. 33 of 1996 before the learned Civil Judge (J.D.), Lunawava for declaration and injunction against the Nagar Palika. He was able to obtain status quo order on 21.5.1996.

5.3. In that pending litigation, the President of Lunawada Nagar Palika became very generous and charitable at the cost of public to the petitioner and got resolution No.79 passed on 27.10.1997, giving power to the President to enter into a settlement in the pending cases. The President then invited the late father of the petitioner to appear before the Lok Adalat, held on 26.04.1998, wherein the matter was compromised and the suit was withdrawn. The President and the late father of the petitioner entered into an agreement about the said land on 28.05.1998.

5.4. Later on, on 06.08.1998, the Nagar Palika passed another Resolution No.17 and decided that the

disputed land be allotted to the late father of the petitioner to put up a pakka construction/shop as is the case of the petitioner.

5.5. The President continuing to be charitable and generous to the late father of the petitioner that before passing of the aforesaid resolution dated 6.8.1998, he wrote a letter to the late father of the petitioner on 23.06.1998, asking him to complete the construction within one month and to start paying rent with effect from 01.07.1998. Besides that, certain other conditions were also mentioned in the said letter, viz. that not to put up doors and windows abutting on the properties adjoining to the disputed land, not to put up construction so as to obstruct light and air of other persons; and to put up the construction of the ground floor only as per the plan enclosed as per the instructions of the employees of the construction branch of the Municipality after obtaining the 'Hadpali' (boundaries). This shows that the President of the Municipality was acting as if he is a 'monarch' and was having all powers to deal with the property of the Municipality, in fact, is not even of 'absolute ownership' of the Municipality which is the only trustee of the property, particularly the immovable property.

6. The conduct of the petitioner shows that he has least regard for the law, he overlooked communication dated 08.08.1998, whereby he was intimated that

Collector, Panchmahal- Godhra has intimated the Chief Officer of Lunawada Nagar Palika on telephone that the 'work' should be immediately stopped or else necessary legal proceedings will be taken. The same was not only overlooked but was disobeyed. This particular aspect is taken note of even in the earlier order passed by this Court. Relevant of the earlier judgment and order is reproduced as under:

> "Mr. Kharadi, learned Advocate for the petitioner assailing the order of the Collector submitted that the Collector's order is a non-speaking order and the Collector has not discussed any facts. An important aspect which is to be noted in this matter is that no material was placed before the Collector to show that soon after the service of the order asking the petitioner to stop the construction, he did so. In fact he continued the construction and completed the same. On the contrary, the case of the petitioner is that the permission was granted on 23.6.1998 and under that permission he was required to complete the construction within one month and therefore, he completed the construction on or before 27th July, 1998 and the impugned order is passed on 4.1.1999 and therefore, there is no question of putting up any construction after the order was served on him. Mr. Kharadi is not able to explain as to in what circumstances it is recorded by the Collector that the petitioner had represented

before the Collector and that he had received a written intimation from the Chief Officer, for not to proceed with the construction, but as he was permitted by the President, after taking the approval of the General Body and stopping the construction would have caused loss to his business.”

This speaks volumes about the character of the party, showing that he was bent upon not to follow instructions given by the authorities.

7. Mr. Joshi, learned advocate for the petitioner, submitted that order dated 04.01.1999 passed by the Collector, whereby Resolution No.17 dated 06.08.1998 passed by Lunawada Nagar Palika is set aside is not in accordance with law. In support of his submission, he relied upon Section 258 of the Gujarat Municipalities Act, 1963. According to him, Section 258 of the Act provides for the powers of the Collector to suspend the execution of the orders, etc. of the Municipalities. The learned advocate for the petitioner submitted that this power can be exercised only in the circumstances which are set out in the Section. According to the learned advocate for the petitioner, it is only when the Collector is of the opinion that execution of any order or resolution of a Municipality or for that reason, doing of anything, which is about to be done or is being done, by or on behalf of the Municipality is causing or is likely to cause **injury or annoyance to the public**

or to lead to a breach of the peace or is unlawful, Collector can resort to Section 258 of the Act and not otherwise.

Mr. Joshi, learned advocate for the petitioner, vehemently submitted that, in the present case, resolution No.17, which is quashed by the Collector, was neither causing any injury nor annoyance to the public. It was also not leading to a breach of peace nor was unlawful and, therefore, the Collector could not have exercised the power conferred by Section 258 of the Act.

The submissions of the learned advocate for the petitioner are not only without any substance but are resorted to only with a view to see that the ill-designs of the petitioner are got through. In the present case, it was declared by this Court and that declaration as is not altered by the Division Bench, holds the field. Relevant part of judgment dated 7.8.2000 reads as under:

> “This is a case wherein the President of Lunawada Nagar Palika has acted without any authority.....”

The judgment has also recorded that, “the petitioner in total disregard of law and flouting the orders passed by the competent authority, has put up the construction”.

The order has also recorded that, “the order of the Collector is in accordance with law.”

All these findings recorded by this Court still hold the field and, therefore, it is not open to the learned advocate for the petitioner to re-agitate the issue again.

8. The only order which can be assailed is order passed by the Revisional Authority in Revision Application No.70 of 2002 dated 29.03.2007. This Court has perused the conclusions recorded by the Revisional Authority and the Court finds that every conclusion recorded by the Revisional Authority are in accordance with law and do not want interference at the hands of this Court.

9. In the result, the present petition fails and the same is dismissed. Notice is discharged with no order as costs.

(RAVI R. TRIPATHI, J.)

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